

**BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**In the Matter of:**

**M L EMERY & SON,**

**Respondent.**

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)  
)

**Docket No.: FMCSA-2008-0385**

**(MO-2008-0185-US0775)**

DEPT OF TRANSPORTATION  
RECORDS  
2008-10-10 10:00

**FIELD ADMINISTRATOR'S OBJECTION  
TO RESPONDENT'S REQUEST FOR INFORMAL HEARING**

**NOW COMES** the Field Administrator for the Federal Motor Carrier Safety Administration, Midwestern Service Center, who files this Objection to the request for Informal Hearing. In support thereof the Field Administrator states as follows:

1. On April 1, 2008, the Texas Department of Public Safety conducted a "roadside inspection" of a vehicle owned and operated by M L Emery & Son wherein the inspector cited the carrier for various violations of the safety regulations. On September 11, 2008, the Missouri Division Administrator served a Notice of Claim for one violation of 49 CFR §385.337(b) – "Operating in violation of an FMCSA Out-of-Service Order issued for refusal to submit to a safety audit". The Notice of Claim alleges that on April 1, 2008, the motor carrier operated a commercial motor vehicle in interstate commerce when the carrier previously refused to submit to a safety audit and was ordered out-of-service on October 11, 2007. The Notice of Claim proposes a civil penalty in the amount of \$5,000. Exhibit A

2. On October 11, 2008, ML EMERY & SONS timely filed its reply to the Notice of Claim and requested administrative adjudication in the form of an informal hearing. A copy of the Reply is attached hereto as Exhibit B.

3. In the reply ML EMERY & SONS denies the alleged violation and states it was operating not under the DOT number referenced in the October 11, 2008 Order to Cease Interstate Transportation (#16007155) – and referenced by the Inspector in the roadside inspection report-- but under US DOT number 4630. ML EMERY & SONS argues the carrier “previously operated under US DOT number 4630 a number of years.” Thus, ML EMERY & SONS argues that the out-of-service order was improper, and the carrier committed no violation when it operated between Deerfield, Missouri and Deaf Smith, Texas. **Id.**

4. The FMCSA amended Rules of Practice were published in the Federal Register on May 18, 2005 (70 FR 28467). The effective date for the amended Rules of Practice was November 14, 2005. The amended Rules of Practice apply to "all matters where a Notice of Claim or Notice of Violation is served on or after the effective date." 70 FR 28467, 28469.

5. In the Section-by-Section Analysis of the Final Rule FMCSA discusses the concept of the *informal hearing* and states as follows:

*Section 386.16 Action on Replies to the Notice of Claim*

*Requests for Informal Hearing:* An informal hearing may serve as a speedier alternative to the formal hearing process, as it requires less in the way of written submissions independent of the NOC and the respondent's reply.

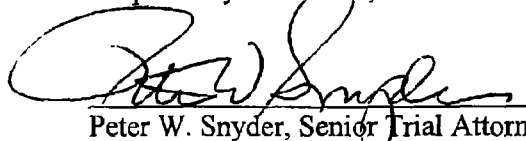
...

*No discovery will be conducted, nor will further motions be considered. (Emphasis added.)* 70 FR 28467, 28474

6. The Field Administrator's objection to this request for informal hearing is based upon the complexity of the issues. What DOT number was ML EMERY & SONS operating on the day in question, and whether it makes any difference? Was the "previous" DOT number invalid, at any rate, based upon an earlier notice from the carrier to the FMCSA to "inactivate" the number? What communications transpired between Mr. Emery and the U.S. DOT enforcement officers? In order for the Field Administrator and ML EMERY & SONS to support their respective positions each will likely be required – at a minimum – to file additional pleadings and to introduce supporting testimony.

7. For these and other reasons, this case is not appropriate for an *informal* hearing. The Field Administrator objects to the request for an informal hearing.

Respectfully Submitted,



Peter W. Snyder, Senior Trial Attorney  
And Enforcement Counsel  
Federal Motor Carrier Safety Administration  
Midwestern Service Center  
19900 Governors Drive  
Olympia Fields, Illinois 60461  
(708) 283-3515

**CERTIFICATE OF SERVICE**

This is to certify that on this 10th day of December, 2008, the undersigned mailed, electronically filed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Eric M. Landoll, Esq.  
McCaffree, Landoll & Slaby  
Attorneys at Law  
Rockwood Building  
128-1/2 West Walnut  
P.O. Box 244  
Nevada, Missouri 64772

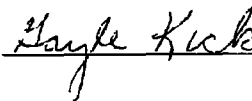
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U.S. Department of Transportation  
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West Building Ground Floor  
Room W12-140  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590  
(202) 493-2251

One Copy  
Via FAX

Darin G. Jones  
Field Administrator  
Federal Motor Carrier Safety Administration  
Midwestern Service Center  
19900 Governors Drive  
Olympia Fields, IL 60461

One Copy  
Hand Delivered

\_\_\_\_\_



U.S. Department  
of Transportation

Federal Motor Carrier  
Safety Administration

Midwestern Service Center

**Fed Ex 7980 0918 6611**

19900 Governors Drive  
Suite 210  
Olympia Fields, IL 60461-1021

Phone: (708) 283-3555  
Fax: (708) 283-3565

September 11, 2008

M L Emery/President  
M L Emery  
dba M L Emery & Son  
Route 1 Box 103B  
Deerfield, MO 64741

**NOTICE OF CLAIM<sup>1</sup>** – Violations of 49 CFR § 385.337(b).

**CIVIL PENALTY: \$5,000**

**Case Number: MO-2008-0185-US0775**

**US DOT Number: 1607155**

Dear Mr. Emery:

A compliance review was conducted at US-0060 Deaf Smith CO, TX on April 1, 2008. The purpose of this review was to determine your compliance with the Federal Motor Carrier Safety Regulations (FMCSR), the Federal Hazardous Materials Regulations (HMR), and the Federal Motor Carrier Commercial Regulations (FMCCR).

As a result of this review, violations were discovered. This letter constitutes a Notice of Claim by the United States Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA) against M L Emery & Son for the amount of \$5,000.

Unless settled or otherwise resolved in a manner set forth below, the FMCSA can recover these penalties, with interest and costs, in a civil action brought in a United States District Court. Additional collection efforts may include, but are not limited to: Internal Revenue Service offsets against tax refunds, and the referral to and the use of collection agencies to collect penalties. **Also, under 49 Code of Federal Regulations (CFR) §§ 386.83 and 386.84, once a final order has been issued, the FMCSA may prohibit M L Emery & Son from operating in interstate commerce until the civil penalty is paid in full and, if applicable, your FMCSA registration will be suspended.**

1) A Notice of Claim is the official charging document used by the FMCSA to initiate a civil action for violations of Federal Laws.



administration to initiate a civil action for

Case Number: MO-2008-0185-US0775

## SUMMARY OF VIOLATIONS

Your company is charged with:

1. One (1) violation of 49 CFR § 385.337(b)- Operating in violation of an FMCSA Out-of-Service Order issued for refusal to submit to a safety audit.

A copy of the documentary evidence collected during the investigation is available from this office. Upon request, the FMCSA will forward a copy of this evidence within a reasonable period of time. For additional details see the attached "Statement of Charges."

## NOTICE OF ABATEMENT

This letter also constitutes a Notice of Abatement of all violations. In order to ensure that these violations cease, your company must take the following actions:

1. Do not operate any commercial motor vehicles in interstate commerce until FMCSA has rescinded your out-of-service order and/or your registration has been reinstated.

### Failure to Abate Cited Violations

Failure to abate the cited violations could cause penalties to be increased in future enforcement actions. Under Section 222 of the Motor Carrier Safety Improvement Act of 1999, recurring violations of the same or related acute or critical regulations (violations of the same Part in Title 49 of the Code of Federal Regulations) that result in three or more enforcement actions within a six-year period will cause the maximum penalties allowed by law to be assessed for the third and subsequent enforcement actions. Any violations with a checkmark in the "§ 222 Applied" column in the penalty table below are subject to this "Section 222" provision and the maximum penalties have been assessed. See 49 USC § 521 note, 49 USC § 521(b), 49 USC § 5123, 49 USC Chapter 149, and 49 CFR Part 386, Appendix A.

## PENALTY

### Penalty Factors for Violations of Safety and Hazardous Materials Regulations

In accordance with 49 USC §§ 521(b)(2)(D) and 5123(c), the FMCSA must, before proposing or claiming a civil penalty, take into consideration the nature, circumstances, extent, and gravity of the violation committed and with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. The civil penalty proposed shall be calculated to induce compliance. These factors will not be considered, however, for violations subject to the Section 222 provision described above.

### Penalty Factors for Violations of Commercial Regulations

In the case of violations of the commercial regulations FMCSA also is not required by statute to consider the Section 521 factors. However, before proposing penalties for violations of the commercial regulations (more specifically the transportation of household goods), 49 U.S.C. § 1490

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(c) requires FMCSA to take into consideration the degree of culpability, any prior history of such conduct, the degree of harm to shippers, ability to pay, the effect on ability to do business, whether the shipper has been adequately compensated before institution of the civil penalty proceeding, and such other matters as fairness may require.

#### Discovered Versus Charged Violations

Violations of either safety or hazardous materials regulations discovered during the course of the roadside inspection, but not proposed for penalty in this Notice of Claim, may have increased the civil penalty claimed for the violations charged in this Notice of Claim. The violations found in Table 1, as attached to this Notice of Claim, detail the violations discovered during our review/inspection.

A listing of the statutes governing maximum and minimum penalties for violations of specific regulations is enclosed.

Given the statutorily mandated items listed above, the FMCSA is proposing a civil penalty as follows:

<u>VIOLATION</u>	<u>TYPE OF VIOLATION<sup>2</sup></u>	<u>NUMBER OF COUNTS</u>	<u>ASSESSMENT PER COUNT</u>	<u>\$222 APPLIED</u>	<u>TOTAL</u>
385.337(b)		1	\$5,000.00		\$5,000.00

**Accordingly, the total amount assessed by the Federal Government as the result of these violations is \$5,000.**

### **HOW TO REPLY TO THE NOTICE OF CLAIM**

Under 49 CFR Part 386, "Rules of Practice for Motor Carrier, Broker, Freight Forwarder, and Hazardous Materials Proceedings," you have specific rights with respect to this Notice of Claim. You are advised to carefully read Part 386 and follow the course of action appropriate for you in this case. A copy of Part 386 is attached to this Notice of Claim for your information. You may wish to seek legal counsel for answers to any questions in reference to this Notice of Claim or procedures under Part 386. DO NOT call the FMCSA Service Center or the Chief Counsel's office for advice or assistance in your defense. You may pursue the following courses of action:

(1) **PAYMENT OF PENALTY:** Within 30 days of service of this Notice of Claim: (a) Pay the assessed penalty in full, or (b) Establish a monthly payment plan by contacting an Enforcement Specialist (NOTE: A payment plan may be available for respondents who demonstrate financial difficulty), or (c) Contact an Enforcement Specialist outlining in writing compelling reasons why the assessed penalty should be reduced and discuss potential settlement. You may be required to submit a current, certified balance sheet or other evidence of assets and liabilities. An Enforcement Specialist can be reached at 708-283-3555. If you pay the full penalty within thirty (30) days of service of this Notice of Claim, you do not need to file a written Reply to the Notice of Claim.

You may pay the fine electronically through our SAFER website at <<http://safer.fmcsa.dot.gov>> by

2) CDL=Commercial Driver's License; FR=Financial Responsibility; HM=Hazardous Materials (the total penalty assessed is per citation, not per number of counts); NO=Notice and Orders; NR=Nonrecordkeeping; R=Recordkeeping; COM=Commercial Regulations.

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selecting "Online Fine Payment."

Alternatively, you may pay by cashier's check, certified check, or money order made payable to the FMCSA and mailed to:

United States Department of Transportation  
Federal Motor Carrier Safety Administration  
Midwestern Service Center  
19900 Governors Drive  
Suite 210  
Olympia Fields, IL 60461-1021

Personal or company checks will not be accepted and will be returned.

**Payment of the penalty will constitute admission of the violation(s) set forth in the Notice Claim and these violations shall constitute prior offenses under either 49 USC § 521(b)(2)(D) (for violations of the Federal Motor Carrier Safety Regulations), 49 USC § 14901(c) (for violations of the Federal Motor Carrier Commercial Regulations involving transportation of household goods) or 49 USC § 5123(c) (for violations of the Hazardous Materials Regulations) unless you proceed under the provisions of 49 C.F.R. § 386.18(c). These offenses may lead to higher penalties in future enforcement actions and adverse future SafeStat rankings.**

(2) **REQUEST FOR ADMINISTRATIVE ADJUDICATION:** You may contest the claim and request Administrative adjudication. If you choose this course of action, you must carefully follow the provisions within 49 CFR § 386.14, including filing a written Reply within thirty (30) days after service of this Notice of Claim.

Your Reply must be in writing, and clearly state the grounds for contesting the Notice of Claim, and must state any affirmative defenses you intend to assert. You must separately admit or deny each violation alleged in this Notice of Claim. Any allegations in the Notice of Claim not specifically denied in the Reply will be deemed admitted. A general denial of the claim is insufficient and may result in a default being entered by the Assistant Administrator. Your Reply must include a statement selecting one of the options for administrative adjudication available under 49 CFR § 386.14(d)(1)(iii). Once you select an adjudication option, you are bound by that selection.

You must serve your reply on all persons listed in the Certificate of Service attached to this Notice of Claim and in accordance with the requirements of 49 CFR § 386.6.

(a) **REQUEST TO SUBMIT EVIDENCE AND ARGUMENT WITHOUT HEARING:** (§§ 386.14(a), 386.14(d)(1)(iii)(A), 386.16(a)). You may contest the allegations in the Notice of Claim without a formal hearing. To do so, you must serve notice of your intention to proceed in this manner by filing a written Reply within thirty (30) days after service of this Notice of Claim. Service of your Reply and Notice of Intent to Submit Evidence and Argument without Hearing must be made upon all representatives listed in the Service List that is attached to this Notice of Claim. If you choose this option, the FMCSA Field Administrator for this Service Center is required to serve all written evidence and written argument on each party listed on the Service List and on the Assistant Administrator for the Federal Motor Carrier Safety Administration within 60 days of the service date of this Notice of Claim. No later than 45 days following service of the Field Administrator's evidence, you must then serve your evidence upon all representatives listed in the Service List attached to the Field Administrator's evidence. The Field Administrator may, within 20 days of your filing, respond



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to your submission of evidence. All evidence must be in the form described in 49 CFR § 386.49, Form of Written Evidence. The Assistant Administrator for the Federal Motor Carrier Safety Administration may issue a Final Agency Order based on the evidence and arguments submitted by both of the parties, or may issue any other order necessary to reach a decision in the matter.

(b) REQUEST FOR A FORMAL HEARING: (§§ 386.14(a), 386.14(d)(1)(iii)(C), 386.16(b)(3)). You may request a hearing on the record before an Administrative Law Judge on any material issues of fact in dispute. If you choose this course of action, you must carefully follow the provisions within 49 CFR § 386.14, including filing a written Reply within thirty (30) days after service of this Notice of Claim. Service of the Reply and Request for Hearing must be made upon all representatives listed in the Service List that is attached to this Notice of Claim. If you choose this option, the Field Administrator will file a notice of consent or objection with basis to your request for hearing within 60 days of service of your Reply. If the Field Administrator files an objection with basis to your request for hearing, the Field Administrator must, then or at a later time, file a Motion for Final Order. No later than 45 days following service of the Field Administrator's Motion for Final Order, you must serve your response upon all representatives listed in the Service List attached to the Field Administrator's Motion. Before a formal hearing will be granted, the Assistant Administrator must determine whether there exists a dispute of a material fact at issue in the matter. After reviewing the record, the Assistant Administrator will either refer the matter to the Office of Hearings for hearing or issue a Final Agency Order based upon the written record.

(c) REQUEST FOR AN INFORMAL HEARING: (§§ 386.14(a), 386.14(d)(1)(iii)(B), 386.16(b)(4)). You may request an informal hearing before a hearing officer on any material issues of fact in dispute. If you choose this course of action, you must carefully follow the provisions within 49 CFR § 386.14, including filing a written Reply within thirty (30) days after service of this Notice of Claim. By requesting an Informal Hearing, you will waive your right to request a formal hearing before an Administrative Law Judge. The Field Administrator will file a notice of consent or objection with basis to your request for an informal hearing within 60 days of service of your Reply. The Assistant Administrator will issue an order granting or denying the request for informal hearing. Before an informal hearing will be granted, the Assistant Administrator must determine whether there exists a dispute of a material fact at issue in the matter. If the informal hearing is granted, the Assistant Administrator will assign the matter to a Hearing Officer. At hearing, both you and the FMCSA will present evidence to the Hearing Officer. After the evidence has been presented, the Hearing Officer will issue a report to the Assistant Administrator containing the findings of fact and recommended disposition of the matter. The Hearing Officer's report will be the only written record of the informal hearing. The Assistant Administrator may issue a Final Agency Order adopting the report, or issue any other Order as appropriate. If your request for an informal hearing is denied by the Assistant Administrator, the Field Administrator will serve a Motion for Final Agency Order. No later than 45 days following service of the Field Administrator's Motion for Final Order, you must serve your response upon all representatives listed in the Service List attached to the Field Administrator's Motion. After reviewing the record, the Assistant Administrator will refer the matter to the Office of Hearings for a formal hearing, or will issue a Final Agency Order based upon the written record.

(3) REQUEST FOR BINDING ARBITRATION: If you dispute **only** the amount of the civil penalty and/or the length of time to pay, you can select to have the civil penalty amount adjudicated through FMCSA's binding arbitration program. You should notify the FMCSA of your request in writing when you submit your Reply. The Assistant Administrator will determine if your case is appropriate

Case Number: MO-2008-0185-US0775

for binding arbitration. You will be notified in writing of the Assistant Administrator's decision regarding your request. You may choose binding arbitration if the only issues that you dispute are the amount of the civil penalty and/or the length of time to pay. FMCSA's guidance on the use of binding arbitration is available through the following link: <<http://www.fmcsa.dot.gov/>>. You can also request a copy of the guidelines from the Service Center.

YOU MUST CERTIFY THAT YOUR REPLY HAS BEEN SERVED IN ACCORDANCE WITH THE REQUIREMENTS CONTAINED WITHIN 49 CFR § 386.6.

THE SPECIFIC RIGHTS PROVIDED FOR IN 49 CFR § 386.14 MAY BE WAIVED IF YOU FAIL TO SUBMIT A WRITTEN REPLY WITHIN THIRTY (30) DAYS AFTER THE SERVICE OF THIS NOTICE OF CLAIM.

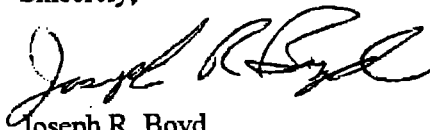
FAILURE TO REPLY TO THE NOTICE OF CLAIM IN THE **EXACT** MANNER SPECIFIED IN 49 CFR § 386.14 MAY BE TREATED AS IF NO REPLY HAS BEEN FILED. UNDER 49 CFR § 386.14(c), A FAILURE TO REPLY MAY CAUSE THE FMCSA TO ISSUE A NOTICE OF DEFAULT AND FINAL AGENCY ORDER THIRTY (30) DAYS AFTER THIS NOTICE OF CLAIM IS SERVED. THE NOTICE OF DEFAULT AND FINAL AGENCY ORDER WILL DECLARE YOU TO BE IN DEFAULT AND DECLARE THE NOTICE OF CLAIM, INCLUDING THE CIVIL PENALTY PROPOSED IN THE NOTICE OF CLAIM, TO BE THE FINAL AGENCY ORDER IN THE PROCEEDINGS. THE FINAL AGENCY ORDER WILL BECOME EFFECTIVE FIVE (5) DAYS AFTER THE NOTICE OF DEFAULT AND FINAL AGENCY ORDER IS SERVED. THE DEFAULT WILL CONSTITUTE AN ADMISSION OF ALL FACTS ALLEGED IN THE NOTICE OF CLAIM AND A WAIVER OF YOUR OPPORTUNITY TO CONTEST THE CLAIM.

A GENERAL DENIAL DOES NOT MEET THE REQUIREMENTS OF 49 CFR § 386.14(d)(1). UNLESS YOUR REPLY COMPLIES WITH THE REQUIREMENTS OF 49 CFR § 386.14(d)(1), THE ASSISTANT ADMINISTRATOR MAY ENTER A DEFAULT AGAINST YOU.

IF YOU DO NOT UNDERSTAND OR ARE CONFUSED ABOUT YOUR RIGHTS AND OBLIGATIONS AS OUTLINED WITHIN THIS NOTICE OF CLAIM, YOU MAY WISH TO SEEK LEGAL ADVICE.

Copies of the procedural regulations, applicable statutes and the Service List are enclosed.

Sincerely,



Joseph R. Boyd  
Division Administrator, Missouri Division  
Federal Motor Carrier Safety Administration

Enclosures

**Case Number: MO-2008-00185-US0775**

**APPLICABLE STATUTES**

Section 521(b) of 49 USC provides for a maximum civil penalty of \$10,000 for operating a commercial motor vehicle in interstate commerce while the carrier is out of service for refusing to allow FMCSA to conduct a new entrant safety audit on its operations. Each day the violation continues shall constitute a separate offense.

## **STATEMENT OF CHARGES**

**Violation 1 --- 49 CFR 385.337(b) - Operating in violation of an FMCSA Out-of-Service Order issued for refusal to submit to a safety audit.**

### **CHARGE #1:**

On or about 04/01/2008, M L Emery & Son operated a commercial motor vehicle in interstate commerce from Deerfield, MO to Deaf Smith CO, TX. The carrier refused to permit a safety audit to be performed on its operations by the due date, and an Out of Service Order was served on the carrier on 10/11/2007.

**SERVICE LIST**

This is to certify that on September 11, 2008, the undersigned sent, by the method indicated, the designated number of copies of the Notice of Claim to each of the parties listed below.

Each party listed below must receive the designated number of copies of each filing made in this proceeding in the future.

M L Emery/President  
M L Emery  
dba M L Emery & Son  
Route 1 Box 103B  
Deerfield, MO 64741

Original  
Fed Ex 7980 0918 6611

Joseph R. Boyd, Division Administrator  
U.S. Department of Transportation  
Federal Motor Carrier Safety Administration  
3219 Emerald Lane, Suite 500  
Jefferson City, MO 65109-6863

One Copy  
Personal Delivery

U.S. Department of Transportation  
Federal Motor Carrier Safety Administration  
FMCSA Docket Clerk  
Midwestern Service Center  
19900 Governors Drive  
Suite 210  
Olympia Fields, IL 60461-1021

One Copy  
U.S. Mail or Electronic Mail

Steve Maddox

From: Origin ID: JEFA (573)636-1034  
 Hope Maddox  
 Federal Motor Carrier Safety  
 3219 Emerald Lane Suite 500

Jefferson City, MO 65109



CL0053062/2/254

Ship Date: 11SEP08  
 ActWgt: 1 LB  
 System#: 5072498/INET8061  
 Account#: S \*\*\*\*\*

Delivery Address Bar Code



Ref # MC5MMO  
 Invoice #  
 PO #  
 Dept #

SHIP TO: 4174839956

BILL SENDER

M L Emery, President  
 M L Emery & Son  
 Box 103B RR 1

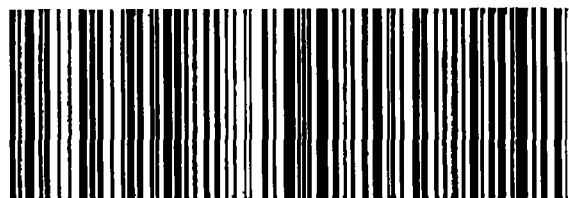
DEERFIELD, MO 647419646

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64741  
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McCAFFREE, LANDOLL & SLABY

ATTORNEYS AT LAW

WM. G. McCAFFREE  
ERIC M. LANDOLL  
DAVID M. SLABY  
\*ALSO ADMITTED IN KANSAS

LEGAL ASSISTANTS:  
LISA GREENLEE  
DENNIS HUGHES  
VIVIAN BURRIS  
TOM ADDINGTON  
SHERYL KNOLL

ROCKWOOD BUILDING  
128 1/2 WEST WALNUT  
P. O. BOX 244  
NEVADA, MISSOURI 64772  
TELEPHONE (417) 667-2211  
FAX (417) 667-6111

October 11, 2008

U.S. Department of Transportation  
Federal Motor Carrier Safety  
Administration  
Midwestern Service Center  
19900 Governors Drive  
Suite 210  
Olympia Fields, IL 60461-1021

REQUEST FOR ADMINISTRATIVE ADJUDICATION  
REQUEST FOR AN INFORMAL HEARING

Case Number: MO-2008-0185-US0775  
US DOT Number: 1607155

Ladies and Gentlemen:

Our office Represents Michael Emery (M L Emery) with respect to the above referenced case number. This letter is a written request for an administrative adjudication of the above-referenced case. Mr. Emery hereby requests an informal hearing.

The Notice of Claim previously provided to Mr. Emery contains one alleged violation as follows:

1. One (1) violation of 49 CFR Section 385.337(b) - Operating in violation of an FMCSA Out-of-Service Order Issued for refusal to submit to a safety audit.

The Statement of Charges alleges violation of the above-referenced Section and specifically states in Charge # 1 that "[o]n or about 04/01/2008, M L Emery & Son operated a commercial motor vehicle in interstate commerce from Deerfield, MO to Deaf Smith CO, TX. The carrier refused to permit a safety audit to be performed on its



October 11, 2008

Page 2

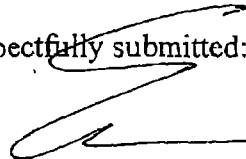
operations by the due date, and an Out of Service Order was served on the carrier on 10/11/2007."

Mr. Emery denies the above stated allegation for the following reasons:

Prior to 04/01/2008 Mr. Emery submitted a Motor Carrier Identification Report, Form MCS-150 for US DOT Number 4630. A copy of that form is included herewith and incorporated herein by reference. He was operating under the US DOT Number 4630 on 04/01/2008 when he made contact with the TX DOT officer that resulted in an out of service for 10 hour, log book violation. At the time Mr. Emery made contact with the TX DOT officer referenced above, he informed the officer he was operating under DOT Number 4630, which was on the side of Mr. Emery's truck. The DOT officer apparently used the out of service DOT Number 1607155 from an application form contained in Mr. Emery's truck file in reference to the stop. The US DOT number 16077155 had previously been used by Mr. Emery temporarily. The was due to apparently incorrect information provided by a US DOT officer located in Joplin, Missouri who informed Mr. Emery that he was not allowed to operate under the US DOT number 4630. He had previously operated under US DOT number 4630 a number of years. After a telephone conference between Mr. Emery and a US DOT representative based in Washington, DC, it was discovered he could operate under US DOT number 4630 at which time he resumed using that US DOT number.

In addition to requesting an adjudication as outlined above, this letter is a request that the FMCSA forward a copy of any documentary evidence collected during the investigation of this matter.

Respectfully submitted:



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Eric M. Landoll

I hereby certify that a true and correct copy of the Request for Administrative Adjudication was



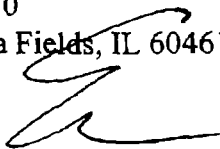
October 11, 2008

Page 3

served upon the following by  
U.S. Mail, postage prepaid, this  
11<sup>th</sup> day of October 2008:

Joseph R. Boyd, Division Administrator  
U.S. Department of Transportation  
Federal Motor Carrier Safety Administration  
3219 Emerald Lane, Suite 500  
Jefferson City, Missouri 65109-6863

U.S. Department of Transportation  
Federal Motor Carrier Safety Administration  
FMCSA Docket Clerk  
Midwestern Service Center  
19900 Governors Drive  
Suite 210  
Olympia Fields, IL 60461-1021



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Eric M. Landoll

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# MOTOR CARRIER IDENTIFICATION REPORT

(Application for U.S. DOT Number)

U.S. Department of Transportation  
Federal Motor Carrier  
Safety Administration

## REASON FOR FILING (Check Only One)

☐ NEW APPLICATION ☐ BIENNIAL UPDATE OR CHANGES ☒ OUT OF BUSINESS NOTIFICATION ☐ REAPPLICATION (AFTER REVOCATION OF NEW ENTRANT)

1. NAME OF MOTOR CARRIER <b>M L EMERY</b>				2. TRADE OR D.B.A (DOING BUSINESS AS) NAME <b>M L EMERY</b>																																																																																						
3. PRINCIPAL STREET ADDRESS/ROUTE NUMBER <b>ROUTE 1 BOX 103B</b>			4. CITY <b>DEERFIELD</b>		5. MAILING ADDRESS (P O BOX) <b>ROUTE 1 BOX 103B</b>		6. MAILING CITY <b>DEERFIELD</b>																																																																																			
7. STATE/PROVINCE <b>MO</b>		8. ZIP CODE+4 <b>64741</b>		9. COLONIA (MEXICO ONLY)		10. STATE/PROVINCE <b>MO</b>		11. ZIP CODE+4 <b>64741</b>		12. COLONIA (MEXICO ONLY)																																																																																
13. PRINCIPAL BUSINESS PHONE NUMBER <b>(417) 483-9956</b>				14. PRINCIPAL CONTACT CELLULAR PHONE NUMBER <b>4174839956</b>				15. PRINCIPAL BUSINESS FAX NUMBER																																																																																		
16. USDOT NO. <b>1607155</b>		17. MC OR MX NO.		18. DUN & BRADSTREET NO.		19. IRS/TAX ID NO. EIN#		SSN# <b>490-66-6124</b>		20. INTERNET E-MAIL ADDRESS																																																																																
21. COMPANY OPERATION (Circle all that apply) <input checked="" type="checkbox"/> Interstate Carrier <input type="checkbox"/> Intrastate Hazmat Carrier <input type="checkbox"/> Intrastate Non-Hazmat Carrier <input type="checkbox"/> Interstate Shipper <input type="checkbox"/> Intrastate Shipper <input type="checkbox"/> Vehicle Registrant Only																																																																																										
22. CARRIER MILEAGE (to nearest 10,000 miles for Last Calendar Year)      YEAR																																																																																										
23. OPERATION CLASSIFICATION (Circle All that Apply) A. Authorized For-Hire    D. Private Passengers (Business)    G. U.S. Mail    J. Local Government B. Exempt For-Hire    E. Private Passengers (Non-Business)    H. Federal Government    K. Indian Tribe <input checked="" type="checkbox"/> Private Property    F. Migrant    I. State Government    L. Other																																																																																										
24. CARGO CLASSIFICATIONS (Circle All that Apply) A. GENERAL FREIGHT    F. LOGS, POLES    J. FRESH PRODUCE <input checked="" type="checkbox"/> GRAIN, FEED, HAY    V. COMMODITIES DRY BULK B. HOUSEHOLD GOODS    G. BEAMS, LUMBER    K. LIQUIDS/GASES    Q. COAL/COKE    W. REFRIGERATED FOOD C. METAL SHEETS; COILS; ROLLS    H. BUILDING MATERIALS    L. INTERMODAL CONT.    R. MEAT    X. BEVERAGES    BB. CONSTRUCTION D. MOTOR VEHICLES    I. MOBILE HOMES    M. PASSENGERS    S. GARBAGE, REFUSE, TRASH    Y. PAPER PRODUCTS    CC. WATER WELL E. DRIVE AWAY/TOWAWAY    J. MACHINERY    N. OIL FIELD EQUIPMENT    T. U.S. MAIL    Z. UTILITY    DD. OTHER <input checked="" type="checkbox"/> LIVESTOCK    U. CHEMICALS    AA. FARM SUPPLIES																																																																																										
25. HAZARDOUS MATERIALS CARRIED OR SHIPPED (Circle All that Apply) C - CARRIED S - SHIPPED B(BULK) - IN CARGO TANKS NB(NON-BULK) - IN PACKAGES <table style="width: 100%; font-size: small;"> <tr> <td>C S A. DIV 1.1</td><td>B NB C S K. DIV 2.2A (Ammonia)</td><td>B NB C S U. DIV 4.2</td><td>B NB C S EE. HRCQ</td><td>B NB</td></tr> <tr> <td>C S B. DIV 1.2</td><td>B NB C S L. DIV 2.3A</td><td>B NB C S V. DIV 4.3</td><td>B NB C S FF. CLASS 8</td><td>B NB</td></tr> <tr> <td>C S C. DIV 1.3</td><td>B NB C S M. DIV 2.3B</td><td>B NB C S W. DIV 5.1</td><td>B NB C S GG. CLASS 8A</td><td>B NB</td></tr> <tr> <td>C S D. DIV 1.4</td><td>B NB C S N. DIV 2.3C</td><td>B NB C S X. DIV 5.2</td><td>B NB C S HH. CLASS 8B</td><td>B NB</td></tr> <tr> <td>C S E. DIV 1.5</td><td>B NB C S O. DIV 2.3D</td><td>B NB C S Y. DIV 6.2</td><td>B NB C S II. CLASS 9</td><td>B NB</td></tr> <tr> <td>C S F. DIV 1.6</td><td>B NB C S P. CLASS 3</td><td>B NB C S Z. DIV 6.1A</td><td>B NB C S JJ. ELEVATED TEMP MAT.</td><td>B NB</td></tr> <tr> <td>C S G. DIV 2.1</td><td>B NB C S Q. CLASS 3A</td><td>B NB C S AA. DIV 6.1B</td><td>B NB C S KK. INFECTIOUS WASTE</td><td>B NB</td></tr> <tr> <td>C S H. DIV 2.1LPG</td><td>B NB C S R. CLASS 3B</td><td>B NB C S BB. DIV 6.1Poison</td><td>B NB C S LL. MARINE POLLUTANTS</td><td>B NB</td></tr> <tr> <td>C S I. DIV 2.1(Methane)</td><td>B NB C S S. COMB LIQ</td><td>B NB C S CC. DIV 6.1SOLID</td><td>B NB C S MM. HAZARDOUS SUB(RQ)</td><td>B NB</td></tr> <tr> <td>C S J. DIV 2.2</td><td>B NB C S T. DIV 4.1</td><td>B NB C S DD. CLASS 7</td><td>B NB C S NN. HAZARDOUS WASTE</td><td>B NB</td></tr> <tr> <td></td><td></td><td></td><td>C S OO. ORM</td><td>B NB</td></tr> </table>												C S A. DIV 1.1	B NB C S K. DIV 2.2A (Ammonia)	B NB C S U. DIV 4.2	B NB C S EE. HRCQ	B NB	C S B. DIV 1.2	B NB C S L. DIV 2.3A	B NB C S V. DIV 4.3	B NB C S FF. CLASS 8	B NB	C S C. DIV 1.3	B NB C S M. DIV 2.3B	B NB C S W. DIV 5.1	B NB C S GG. CLASS 8A	B NB	C S D. DIV 1.4	B NB C S N. DIV 2.3C	B NB C S X. DIV 5.2	B NB C S HH. CLASS 8B	B NB	C S E. DIV 1.5	B NB C S O. DIV 2.3D	B NB C S Y. DIV 6.2	B NB C S II. CLASS 9	B NB	C S F. DIV 1.6	B NB C S P. CLASS 3	B NB C S Z. DIV 6.1A	B NB C S JJ. ELEVATED TEMP MAT.	B NB	C S G. DIV 2.1	B NB C S Q. CLASS 3A	B NB C S AA. DIV 6.1B	B NB C S KK. INFECTIOUS WASTE	B NB	C S H. DIV 2.1LPG	B NB C S R. CLASS 3B	B NB C S BB. DIV 6.1Poison	B NB C S LL. MARINE POLLUTANTS	B NB	C S I. DIV 2.1(Methane)	B NB C S S. COMB LIQ	B NB C S CC. DIV 6.1SOLID	B NB C S MM. HAZARDOUS SUB(RQ)	B NB	C S J. DIV 2.2	B NB C S T. DIV 4.1	B NB C S DD. CLASS 7	B NB C S NN. HAZARDOUS WASTE	B NB				C S OO. ORM	B NB																								
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26. NUMBER OF VEHICLES THAT CAN BE OPERATED IN THE U.S. <table style="width: 100%; font-size: x-small;"> <tr> <th rowspan="2"></th><th rowspan="2">Straight Trucks</th><th rowspan="2">Truck Tractors</th><th rowspan="2">Trailers</th><th rowspan="2">HazMat Cargo Tank Trucks</th><th rowspan="2">HazMat Cargo Tank Trailers</th><th rowspan="2">Motor Coach</th><th colspan="2">School Bus</th><th>Mini-bus</th><th>Van</th><th colspan="2">Limousine</th></tr> <tr> <th colspan="6">Number of vehicles carrying number of passengers (including the driver) below</th></tr> <tr> <td></td><td></td><td></td><td></td><td></td><td></td><td></td><td>1-8</td><td>9-15</td><td>16+</td><td>1-8</td><td>9-15</td><td>1-8</td><td>9-15</td><td>16+</td></tr> <tr> <td>OWNED</td><td></td><td>1</td><td>1</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr> <tr> <td>TERM LEASED</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr> <tr> <td>TRIP LEASED</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr> </table>													Straight Trucks	Truck Tractors	Trailers	HazMat Cargo Tank Trucks	HazMat Cargo Tank Trailers	Motor Coach	School Bus		Mini-bus	Van	Limousine		Number of vehicles carrying number of passengers (including the driver) below													1-8	9-15	16+	1-8	9-15	1-8	9-15	16+	OWNED		1	1												TERM LEASED															TRIP LEASED														
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27. DRIVER INFORMATION				INTERSTATE		INTRASTATE		TOTAL DRIVERS		TOTAL CDL DRIVERS																																																																																
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28. IS YOUR U.S. DOT NUMBER REGISTRATION CURRENTLY REVOKED BY THE FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION? Yes <input type="checkbox"/> No <input type="checkbox"/> If Yes, enter your U.S. DOT Number:																																																																																										
29. PLEASE ENTER NAME(S) OF SOLE PROPRIETOR(S), OFFICERS OR PARTNERS AND TITLES (e.g. PRESIDENT, TREASURER, GENERAL PARTNER, LIMITED PARTNER) 1. <b>M L EMERY</b> (Please Print Name)      2. (Please Print Name)																																																																																										
30. CERTIFICATION STATEMENT (to be completed by an authorized official) I, _____, certify that I am familiar with the Federal Motor Carrier Safety Regulations and the Federal Hazardous Materials Regulations. Under penalties of perjury, I declare that the information entered on this report is to the best of my knowledge and belief, true, correct and complete. Signature: <i>Michael Emery</i> Date: <b>5/16/07</b> Title: <b>Pres. Owner</b> (Please Print)																																																																																										